REMARKS/ARGUMENTS

Claims 1-23 are pending in the present application. The Examiner has rejected claims 1-17, 19, and 21. The Examiner has objected to claims 18, 20, 22, and 23. Applicant respectfully requests reconsideration of pending claims 17-23.

Applicant cannot find a PTO-892 Notice of References Cited listing the newly cited reference. Applicant respectfully requests the Examiner provide a PTO-892 Notice of References Cited for all references considered, but listed on a previous PTO-892 Notice of References Cited.

Regarding the Dravida reference, the Examiner states, "It is inherent that this change in routes must be away from the congestion as there would be no other reason to change the routing due to the change in congestion status." While the Examiner asserts a rejection based on inherency, Applicant submits that the teachings of the cited reference fail to establish inherency in accordance with existing law. For example, Applicant submits that the Examiner has failed to establish that the public gained the benefit of the subject matter recited in claims 17, 19, and 21 from the teachings of the cited reference. *Schering Corp. v. Geneva Pharmaceuticals*, 339 F.3d 1373 (Fed. Cir. 2003). As another example, Applicant submits that the Examiner has failed to establish that the subject matter recited in claims 17, 19, and 21 is present in the teachings of the cited reference. *Mentor v. Medical Device Alliance*, 244 F.3d 1365 (Fed. Cir. 2001); *Scaltech v. Retec/Tetra*, 178 F.3d 1378 (Fed. Cir. 1999). Thus, Applicant submits that the subject matter recited in claims 17, 19, and 21 cannot be considered to be inherent in the teachings of the cited reference. Accordingly, Applicant submits the Examiner has failed to satisfy the burden of proof required for asserting a rejection based on inherency. Therefore, Applicant submits that the Examiner has not shown claims 17, 19, and 21 to be anticipated by the cited reference. Consequently, Applicant submits claims 17, 19, and 21 are in condition for allowance.

The Examiner has rejected claims 1-16 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. The Examiner states claim 1 "recites the limitation 'the distributed processor' in line 5." The Examiner further states, "This rejection can be overcome by changing the wording of the claim limitation to something like 'one of the plurality of distributed processors." Applicant has amended claim 1 accordingly. Therefore, Applicant submits claim 1 is in condition for allowance.

The Examiner has rejected claims 1 and 2 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,320,500, issued to Barberis et al. Applicant respectfully disagrees.

Regarding claim 1, the Examiner cites Figure 1B, col. 3, lines 49-52, and col. 4, lines 43-49, of Barberis et al. as teaching the features recited in claim 1. The Examiner states, "As is well known in the art, a large buffer delay indicates congestion and thus discloses the congestion indication of the claimed invention." However, the Examiner fails to cite any reference or provide any other evidence in support of that assertion. Moreover, the Examiner does not clarify whether "large buffer delay" refers to a large delay of a buffer or a delay of a large buffer. Thus, Applicant traverses the Examiner's apparent attempt to assert official notice. Therefore, Applicant submits claim 1 is in condition for allowance.

Regarding claim 2, Applicant has presented arguments for the allowability of claim 1, from which claim 2 depends. Thus, Applicant submits claim 2 is also in condition for allowance.

The Examiner has rejected claim 12 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,320,500, issued to Barberis et al. in view of Applicant's admitted prior art. Applicant respectfully disagrees.

Regarding claim 12, the Examiner alleges it would have been obvious to modify Barberis to implement the input and output buffers of Figure 1B on separate line cards and states, "The motivation for doing so would have been to allow the nodes of Barberis to have more capacity (N input/output cards can support more traffic than if all the buffers where implemented on a single card)...." However, the Examiner does not cite any references or provide any evidence to support that contention. Thus, Applicant traverses the Examiner's asserted motivation. Therefore, Applicant submits claim 12 is in condition for allowance.

The Examiner has rejected claims 17, 19, and 21 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,253,248, issued to Dravida et al. in view of Applicant's admitted prior art. Applicant respectfully disagrees.

Regarding claims 17 and 19, the Examiner alleges it would have been obvious to modify Dravida to implement the input and output buffers of Figure 27 on separate line cards and states, "The motivation for doing so would have been to allow the nodes of Dravida to have more capacity (N input/output cards can support more traffic than if all the buffers where implemented on a single

card)...." However, the Examiner does not cite any references or provide any evidence to support that contention. Thus, Applicant traverses the Examiner's asserted motivation. Therefore, Applicant submits claims 17 and 19 are in condition for allowance.

Regarding claim 21, Applicant has presented arguments for the allowability of claim 19, from which claim 21 depends. Thus, Applicant submits claim 21 is also in condition for allowance.

The Examiner has objected to claims 18, 20, 22, and 23 as being dependent upon a rejected base claim, but states that they would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The Examiner states claims 3-11 and 13-16 would be allowable if rewritten to overcome the rejections under 35 U.S.C. § 112, second paragraph, set forth in the Office action and to include all of the limitations of the base claim and any intervening claims.

In conclusion, Applicant has overcome all of the Office's rejections, and early notice of allowance to this effect is earnestly solicited. If, for any reason, the Office is unable to allow the Application on the next Office Action, and believes a telephone interview would be helpful, the Examiner is respectfully requested to contact the undersigned attorney.

Respectfully submitted,

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Date

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